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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,679	01/04/2002	Stephen Leslie Buchwalter	EN9-98-117-US2	9725

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SCHMEISER, OLSEN + WATTS
SUITE 201
3 LEAR JET
LATHAM, NY 12033

EXAMINER

BROCK II, PAUL E

ART UNIT	PAPER NUMBER
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2815

DATE MAILED: 07/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/039,679

Applicant(s)

BUCHWALTER ET AL.

Examiner

Paul E Brock II

Art Unit

2815

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

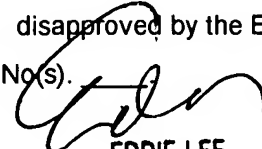
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 10-25 and 27-30.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: _____


EDDIE LEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Continuation of 5. does NOT place the application in condition for allowance because: While the applicant references many patents with similar claim language as presently claimed, these arguments are not persuasive. Because the Office did not find reason to reject those claims under U.S.C. 112 does not make the present claims correct. Each application is evaluated on a case by case scenario. In this case, and with particular reference to patents 6,576,578 and 6,576,539, all of the claimed steps have a "stated order" or "sequence". For example '578 specifically has each step numbered. Also, '539 is written in such a way where each step refers to a structure made by a previous structure. These two examples are remarkably similar to what the examiner has suggested to the applicant in the Final Office action dated May 23, 2003. With further regard to 6,576,489, these claims are materially different than those set forth in the present application because the wording appears in a dependent claim with steps that have already been defined. Therefore, the applicant's arguments are not persuasive and the rejection is proper.

With regard to the applicant's argument that "the bottom surface is in direct mechanical contact with the layer 2," it should be noted that the claim language of "exposed" does not differentiate "direct mechanical contact with layer 2" and being "exposed to layer 2". Therefore, the applicant's arguments are not persuasive, and the rejection is proper.